



## **CITY OF SUNNYVALE REPORT Planning Commission**

**March 13, 2006**

**SUBJECT:** **2005-0028 – City of Sunnyvale** – Study Issue to consider changes to the current Tree Preservation Ordinance (Sunnyvale Municipal Code §19.49).

### **REPORT IN BRIEF**

The purpose for the study is to examine the City's current tree preservation ordinance and explore whether or not the ordinance should be modified in order to meet the City's goals as well as the needs of property owners. The report discusses a range of possible modifications and discusses the advantages and disadvantages of each option. The report is also an informational document providing background information on the City's current policies and procedures related to tree preservation.

Staff is recommending modifications to the existing tree preservation ordinance that include the following: New findings for approving Tree Removal Permits, a new administrative process for illegal tree removals, clarifying appeal rights for Tree Removal Permits, new tree protection measures for developing properties, clarifying solar access rights, and other ordinance clarifications.

### **BACKGROUND**

In December 2004, the City Council ranked this Community Development Study Issue as number seven for 2005. This item was also ranked in previous years but fell below the line for study. The study issue is in response to a variety of issues that have been raised by the public and staff over the past few years, as well as the City Council's concern that it has been almost 15 years since the City's adoption of the original ordinance.

#### **Tree Preservation History**

The City Council, in conjunction with Planning staff, studied the issue of tree preservation on several occasions prior to the adoption of the current Tree Preservation Ordinance in 1991. In 1981, staff focused on developing criteria for Heritage Tree designation and guidelines for Heritage Tree nominations. This was completed concurrently with the City's adoption of the Heritage Preservation Ordinance. In 1987, City efforts culminated in the approval of the Protection of Vegetation During Construction Policy. Subsequently, in 1988, the Council adopted the Preservation of Mature Landscaping Policy, which regulated significant sized trees on multi-family residential properties (precursor

to 1991 ordinance). During the studies conducted in 1987 and 1988, Council chose not to adopt an ordinance for preserving trees in single-family residential districts. At that time, Council and staff believed the disadvantages of a new ordinance outweighed the potential advantages and that clarifying the existing policies would net the same results.

Sunnyvale's current tree preservation ordinance became effective on December 12, 1991 (Sunnyvale Municipal Code §19.49, see Exhibit A). The staff recommendation in 1991 (RTC 91-439) was to exempt single-family residences from the Tree Removal Permit requirement. The preservation of residential property rights was an important consideration in whether or not to include single-family properties. The Planning Commission recommended and the City Council adopted the ordinance to apply to all private property, city parks, and city-owned golf courses. The rationale was that all trees, regardless of the land use, were found to be a community-wide resource benefiting the aesthetics of the City, the environment, and property values citywide. In 1991, many other Bay Area cities had already adopted similar tree preservation ordinances. Of the 15 cities in Santa Clara County at that time, eight cities regulated trees on private property and all 15 had City street tree regulations.

The following table summarizes the City's past ordinances, policies, and studies relating to tree protection and heritage preservation.

<b>Year</b>	<b>Policy/Ordinance/Study</b>	<b>Significance</b>
<b>1958</b>	City Tree Ordinance (Updated in 1991)	Regulates the maintenance and removal of City owned trees, such as street trees and median park strip trees
<b>1981</b>	Heritage Preservation Chapter of the Zoning Code	Establishes specific qualifications and protection for Heritage Trees; trees with Local Landmark designations, and trees on the Heritage Resource inventory. In 2006, the City has two Local Landmark trees (Vargas Redwoods) and 15 Heritage Resource trees listed.
<b>1987</b>	Protection of Vegetation during Construction Policy	Requires a tree protection plan to be submitted showing the methods to be used during construction to protect each tree designated for preservation.
<b>1988</b>	Preservation of Mature Landscaping Policy	Addresses all non-single family residential uses on developing sites. This policy acted as the precedent for the minimum tree size (38 inches in diameter) used in the 1991 tree preservation ordinance.

Year	Policy/Ordinance/Study	Significance
1991	City Tree Ordinance (SMC 13.16)	Updating of 1958 ordinance, it regulates the maintenance and removal of City owned trees. It does not apply to trees in City owned parks or golf courses.
1991	Tree Ordinance (SMC 19.94)	Regulates the maintenance and removal of trees on private property and City owned parks and golf courses
1997	Study Issue to Review 1991 Tree Ordinance	Addressed several issues that had been identified with 1991 ordinance, including, the permit process, the impact on single-family property owners, and tree measurement criteria.

Sunnyvale's past and present policies pertaining to tree preservation have contributed to the City's eligibility for the Tree City USA award from the National Arbor Day Foundation. The City has received this award every year since 1988.

### **EXISTING POLICY**

Sunnyvale's tree preservation ordinance regulates only trees on private property and in City owned parks and golf courses. The ordinance does not pertain to City street trees, which are regulated by SMC 13.16 (City Trees). In October 2005, the City Council adopted a new policy relating specifically to Liquidambar street trees located within the public right-of-way (RTC 05-316). At that time the Council allowed a limited number of trees to be removed annually and required replacement trees to be replanted. The scope of this study issue does not pertain to street trees.

### **Tree Preservation Ordinance**

The tree preservation ordinance states that "significant sized" trees on private property are subject to the code's requirements. Significant size is defined by the code as a tree 38 inches or greater in circumference measured four feet above ground for single-trunk trees. For multi-trunk trees significant size means a tree which has at least one trunk with a circumference 38 inches or greater measured four feet above ground level, or in which the measurements of the circumferences of each of the multi-trunks, when measured four feet above the ground level, added together equal an overall circumference 113 inches or greater.

The tree ordinance categorizes significant sized trees as protected and requires a Tree Removal Permit (TRP) be approved prior to their removal. Any tree

measuring less than the above criteria for significant size is not considered protected under City code and may be removed unless otherwise protected by some other action.

### **Permit Process**

TRPs are free applications and can be applied for on the City's web site, at City Hall, or can be faxed into the Community Development Department. Only a property owner can apply to remove a tree from their property, not a leaser or renter. Following the submittal of a permit, the City arborist conducts a site visit to examine the subject tree. The arborist determines if one of the first two findings can be made (see Findings Required section below). Upon assessment of the tree, a recommendation is made whether or not to allow the tree's removal. This recommendation is sent back to Planning and used as the primary source of information by Planning staff in rendering the final decision to approve or deny the TRP. If the arborist's recommendation is to allow the tree removal, planning staff sends the applicant a letter stating the approval along with information regarding the requirements for a replacement tree or in-lieu fee (see Replacement Tree section below).

If the arborist's recommendation is to deny the tree removal request, a planner also conducts a site visit to determine if the tree inhibits the property owner's reasonable use or economic potential of the property (Finding #3). In this way, the two separate staff reviews work in conjunction to ensure that a thorough analysis of the request is completed. If the applicant does not agree with the staff decision, they have the right to appeal the application within 15 days. All appeals of staff's decision are heard before the Planning Commission, whose decisions are final (no appeals to Council).

The TRP application process can take up to 10-working days to complete.

### **Findings Required**

In order to grant approval of a TRP request in accordance with §19.94.060 of the ordinance, at least one of the following findings must be made:

- (a) The tree is diseased or damaged;*
- (b) The tree represents a potential hazard to people, structures or other trees;*
- (c) The tree is in basically sound condition, but restricts the owner's ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property owner's use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection:*

- (1) The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;*
- (2) The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;*
- (3) The approximate age of the tree relative to its average life span;*
- (4) The potential effect of removal on soil erosion and stability where the tree is located;*
- (5) Current and future visual screening potential;*
- (6) Any other information the director of community development finds pertinent to the application.*

The City arborist focuses primarily on the first two findings (*a* and *b*), while Planning staff evaluates permits based primarily on finding (*b*) and (*c*). The reasonable use of property finding (*c*) is more complex due to the subjective nature of the issue. This finding is the most contentious of the findings since it is open to interpretation.

When City staff evaluates City owned street trees for removal, the same set of criteria are used as the determining factors. The arborists generally focus only on the findings of diseased, dying, potential hazard to people or property, or age of the tree. They do not review trees based on visual potential, debris droppings, or the reasonable use or economic potential of the City property.

### **Relationship to General Plan**

The following General Plan goals, policies, and action statements address the tree preservation ordinance:

#### ***Community Design Sub-Element***

*Goal A:* Promote Sunnyvale's image by maintaining, enhancing and creating physical features which distinguish Sunnyvale from surrounding communities and by preserving historic buildings, special districts and residential neighborhoods which make the City unique.

*Goal B:* Create an attractive street environment which will complement private and public properties and be comfortable for residents and visitors.

*Action Statement B.1.e:* Consider uniform and cohesive landscape themes for districts, major thoroughfares, City boundaries and neighborhoods.

*Action Statement B.1.h:* Continue to provide attractive canopy trees in residential districts.

*Policy C.2:* Review site plans to ensure the design is compatible with the natural and surrounding built environment.

*Action Statement C.2.b:* Continue to monitor and develop standards for the preservation of mature trees and landscaping and encourage the preservation of landscaping to be considered early in the site design.

***Heritage Preservation Sub-Element***

*Goal 6.3B:* To enhance, preserve, and protect Sunnyvale's heritage, including natural features, the built environment and significant artifacts.

***Land Use and Transportation Element***

*Goal C:* Preserve and enhance an attractive community, with a positive image and a sense of place that consists of distinctive neighborhoods, pockets of interest, and human-scaled development.

**DISCUSSION**

A variety of issues have been raised by the public, staff, and City Council over the past few years, concerning the tree preservation ordinance. The issues raised by residential property owners primarily deal with the restrictiveness of the three required findings and the appeal rights for neighbors. The issues staff have raised include the current penalty process for illegal removals, the required findings, solar access rights vs. existing vegetation, saving trees during redevelopment of a site, and planting of large trees in small landscaped areas. The following section is a discussion of the most common concerns and opportunities for modifications to the ordinance.

**Statistics**

The following table summarizes TRP applications by year since 1993. The data does not include tree removal statistics related to development or construction of private property. For example, a new commercial development may be allowed to remove trees under a Special Development Permit approval and are not subsequently required to file a Tree Removal Permit. The data also does not reflect trees removed that are less than significant size.

Year	Applications	No. of Trees	Approvals	Denials/ (Denial Ratio)	Appeals
1993	156	386	146	9 (6%)	1
1994	163	244	148	15 (9%)	0
1995	190	433	180	10 (5%)	0
1996	259	628	238	21 (7%)	0
1997	317	847	284	33 (10%)	1
1998	286	673	247	39 (14%)	1
1999	336	629	285	51 (15%)	0
2000	278	510	245	33 (12%)	2
2001	277	515	239	38 (14%)	3
2002	359	615	327	32 (9%)	4
2003	314	493	267	47 (15%)	6
2004	275	505	241	34 (12%)	2
2005	383	638	337	46 (12%)	4
<b>Averages per Year</b>	<b>276</b>	<b>547</b>	<b>245</b>	<b>31 (11%)</b>	<b>2</b>

As the above table shows, the majority of trees reviewed under the TRP process are approved by staff, with a yearly average approval rate of 89%. During the almost 15 year duration of the tree ordinance, there have been 24 appeals of staff's decision (including years 1991-1992 not shown above). On average, 91% of TRP applications are for residential properties, leaving 9% of permits for all other non-residential properties.

### **Replacement Trees and In-Lieu Fees**

When a tree is approved for removal through the TRP process, a replacement tree or in-lieu fee is typically required for each tree removed as a condition of approval. SMC §19.94.080 specifies that the City may determine appropriate mitigation measures to offset the effects of the removal. A condition of approval for one 15-gallon replacement tree is the most common mitigation measure. All applicants are also given the option of paying the in-lieu fee (currently \$222 per tree) instead of replanting. The fee is based on the cost to purchase a 15-gallon tree and the cost of labor for the City to plant the tree.

Replacement trees must be at least 15-gallon size or greater and may be planted anywhere on the subject property. There is not a requirement for a certain species of tree or specific location on the property where the replacement tree

must be planted. The City has a list of recommended trees to be planted (water conserving species) that is sent to each applicant as a courtesy.

The City tracks replacement trees through a postcard which is included in the information sent to applicants who receive permit approval. The postcard is required to be completed by the applicant and returned to the City within 90 days of the tree's removal. The postcard states the species of the replacement tree, which is used by staff to track replanting. If the in-lieu fee option is chosen, the applicant must submit the fee to the City within the same 90-day period. The following table shows the in-lieu fees the City has received over the past five years:

Year	2001	2002	2003	2004	2005	Annual Average
Fee Amount	\$162	\$162	\$162	\$162 & \$210	\$210 & \$222	
No. of Fees	11	9	23	9	20	15
Total Amounts	\$1,782	\$1,458	\$3,726	\$1,602	\$4,410	\$2,601

In-lieu fees are used for City landscaping projects not anticipated by other budgets, such as the City owned lot on Evelyn and Washington Avenues, which was recently landscaped using these fees.

## ISSUES AND OPTIONS:

### Required Findings

As stated previously, in order to grant approval of a TRP request in accordance with §19.94.060 of the ordinance, at least one of the three findings must be made. These findings are narrowly focused in terms of the three issues they concentrate on and do not address other possible justifications/findings for removing a healthy tree. The following items are potential additions to the existing three findings that must be made to approve a TRP. This list has been gathered from staff's interaction with property owners during the course of TRP review and based on feedback from the public at the study issue community meeting.

- **Sufficient or Over-planted Landscaping** – In some instances, properties were over-planted when first developed or became over-landscaped over time. This usually occurs when there is a property owner who is an active landscaper or one who has diligently tended the original landscaping on site. Consequently, as the landscaping matures many trees have either become crowded or too numerous. When the property owner requests a permit to selectively remove some of the large trees, it may not be approved if the tree is in



healthy condition and does not unreasonably restrict the owner's use of their land.

Staff has often heard the point of view that, if there is no finding to allow the selective removal of healthy trees from a sufficiently landscaped site, then the tree ordinance has become punitive for property owners who carefully maintain their trees and landscaping. In other words, if property owners are good stewards of their trees, the trees will remain healthy and, therefore, may not be approved for removal.

- **Overgrown Trees** – Many property owners, particularly residential property owners, plant inappropriate species of trees or may plant trees in inappropriate locations. A common example staff encounters is a well intended property owner who plants a large species tree (Redwood, Eucalyptus) next to their house or in a side yard area. Their goal is to improve the aesthetics of their property but they are not aware of proper planting practices. As the tree grows very large over time, it becomes evident that the species chosen is not suitable for the tree's location on the site.

Under the current set of three findings, if the tree remains in good health and does not pose a hazard to property or people, the tree is not approved for removal. Staff has often received public feedback stating that some species of trees outgrow their originally intended landscape value due to their placement on site. These trees, once viewed as an asset, become viewed as a nuisance, but may not be approved for removal if one of the findings cannot be made.

- **Definition of Hazard** – A common issue that staff has heard repeatedly from TRP applicants, particularly those applicants who were denied a removal permit, concerns the tree ordinance strict definition of a hazardous tree. SMC §19.94.060(b) states the following finding:

*(b) The tree represents a potential hazard to people, structures or other trees;*

In past practice this has meant the tree is showing a sign of potential hazard. It has not been defined by staff as a certain species of tree or a healthy tree that has grown very large. Typically the City arborist inspects the tree for indications that the tree is structurally unsound or not growing according to standard species patterns. Property owners have stated that potential hazard should include large trees, tall trees, trees with significant sized branches, or trees too close to structures. Under this finding, a tree would be

approved for removal irrespective of the tree's structural integrity or growing pattern, if the tree was perceived as a potential danger.

- **Nuisance Trees** – Another issue staff has commonly heard from the public concerns the ordinance's lack of a finding to remove a tree if the tree becomes a nuisance. Some species of trees have a propensity towards dropping sap, large amounts of needles, producing excessive pollen, attracting bees, or a number of other unwanted problems. Although all trees create debris and require some degree of maintenance, a few species of trees far exceed the standard maintenance requirements.

The third finding (c) contains a provision that allows trees to be removed for a property owner's reasonable use of their property, but this finding is tied typically to construction of buildings or additions to a home. Staff does not use this finding to classify a tree as a nuisance.

Permits have been granted when an applicant has provided evidence of a specific allergy aggravated by a tree. The Planning Commission has granted appeals in some situations where the maintenance of a tree has become a nuisance issue for the property owner under the finding (c)(6) – *Any other information the director of community development finds pertinent to the application.*

### **Tree Species Priority**

The tree preservation ordinance does not specify undesirable or priority species of trees. The ordinance applies to all trees, regardless of the value of the species. In a survey of surrounding cities, staff found that some cities keep a list of protected trees, which classify only certain species of trees as protected, or an undesirable tree list, which are trees that have no protection. Typical protected tree lists include: oaks, redwoods, bay laurels, walnuts, cedar, and maples. Typical undesirable tree lists include: pepper trees, some species of eucalyptus, privets, and palm trees. Sunnyvale's ordinance applying to all trees is similar to the cities of Los Gatos, San Jose, and Milpitas.

One option that some jurisdictions utilize is to classify tree species based on a priority ranking system created by the International Society of Arborists (ISA). Under these guidelines, the value of a tree is determined by several factors including: long term health, species relative to climate/environment, disease susceptibility, tree's location on property, etc. The tree's value is then ranked between one and 100. Through this method, these jurisdictions avoid lengthy lists of trees showing which are protected or which are listed as undesirable species.

### **Penalty Process for Illegal Tree Removals**

The current ordinance has penalties for removal of protected trees without a permit. SMC §19.94.160(b) states:

*In the event that the violation results in any substantial injury or damage to a protected tree, the civil penalty shall be not less than \$5,000 nor more than \$25,000. In the event that the violation results in the destruction or improper removal of a protected tree, the civil penalty shall be not less than \$10,000 nor more than \$50,000. The appropriate penalty shall apply separately to each tree affected by the improper action.*

The SMC also states, in the course of seeking civil penalties, the court shall determine and impose reasonable expenses, including attorney's fees incurred by the City.

At the time of the ordinance's adoption in 1991, the penalty fees for administrative infractions were several hundred dollars. The Planning Commission and City Council supported a similar penalty process for violations, but also wanted to underscore the importance of tree preservation and to have significant fines imposed that would serve as a deterrent. As a result, illegal tree removal penalties were increased to a much higher level than any other permit violation fee.

To date, the City has never brought suit under this civil violation process, although penalties and mitigation measures have been negotiated between staff and owners who have violated the ordinance. A civil lawsuit is cumbersome and would be time and resource consuming if pursued. One alternative to this process would be to have an internal administrative remedy where staff and the property owner work together to come to an agreement on replacing the value of the removed tree. This would be reviewed at an administrative hearing level and the decision could be appealed to the Planning Commission.

Staff contacted other cities with tree preservation ordinances to determine alternate penalty processes. All the cities surveyed had different procedures and fine processes in place. Some of these cities (Saratoga, Campbell, and Mountain View) had a mechanism where fines or landscape restitution plans could be required at an administrative level in order to expedite the process for the City and the property owner.

An overview of the current violation process was presented to the public at the community meetings. In general, the participants supported a higher penalty as a deterrent for illegal removals on commercial or developing properties, but felt it was excessive for single-family property owners. Most participants voted to lower penalties for single-family property owners and strongly supported the idea of an administrative remedy to simplify and expedite the process. At the Planning Commission study session the Commission suggested that fees in the \$500 - \$1,000 range may be appropriate.

### **TRP Appeals**

The current tree preservation ordinance in SMC §19.94 does not specify who can appeal the decision of the Director of Community Development for a TRP. In addition, SMC §19.98.070, which specifies appeal rights for all Community Development applications, does not state the appeal rights for TRP applications. Staff believes this portion of the municipal code was omitted when the code was reformatted to its present system. Staff has historically only allowed appeals from applicants and not from other parties aggrieved by a decision. The original adopted ordinance from 1991 states the following relating to appeal rights:

**§19.81.180 Appeals.** *Any applicant aggrieved by the decision of the Director of Community Development with regard to a protected tree removal permit may appeal such action to the Planning Commission by filing a written appeal with the Planning Commission within 15 days after the date of service of notice of the decisions.*

At this time, the City Council has the opportunity to either restore the appeal rights from the 1991 ordinance, or Council may introduce greater appeal rights for any aggrieved party. If appeal rights are introduced to parties other than the applicant, a notification process should also be introduced. This process would notice adjacent property owners or occupants of a decision by the Community Development Director and inform them of their appeal rights and timeline.

### **Development of Property**

When a development project is submitted to the City, staff works with the applicant to save as many of the existing trees as possible. Typically, some trees are saved and some are removed, depending on the type of development proposed. After project approval, the applicant is required to submit a tree protection plan before any demolition or construction activity can occur on site.

Staff is regularly confronted with two key issues related to the development of property. The first issue is that tree protection measures are often compromised or neglected after development activities have commenced. These compromising activities usually occur quickly and are difficult for staff to monitor on a regular basis. They include piling dirt on tree roots, driving heavy equipment over tree roots, trenching too close to the roots, excessive pruning of tree, etc. As a result, the health of the trees begins to deteriorate and the trees rapidly decline.

One mechanism for assuring that developers or contractors safeguard the health of protected trees could be to require a bond for the value of the tree. This bond could be posted with the City and could only be used if the tree was damaged or died within a reasonable time period after the completion of construction. If this did occur, the City would use the money to replace the aesthetic value of the tree that was lost. If the tree remains in good health, the bond is returned to the developer.

The second issue related to the development of property is the planting of large species trees in small landscape spaces. SMC requires planting of large trees on a site to mitigate: 1) the loss of the existing trees; and, 2) to achieve the code requirement which states that all parking areas must be shaded by trees by 50% in 15 years. Large species trees require large landscaped areas for future growth. Most new development projects do not provide sufficient landscaped area to accommodate growth since large landscaped areas would equate to smaller development projects that are not desirable for the applicant or the City.

The most common means of resolving this issue is to utilize an underground planting measure, such as structural soil, that allows the surface to be paved while still allowing tree roots to grow unabated. This measure is used in locations where new trees are planted adjacent to new paving areas, so that future tree roots to do not cause damage to the surrounding hardscape or structures and so that roots can get enough water and air.

### **Solar Access**

Recently issues have arisen over the installation of solar panels and property rights related to solar access. Specifically, the issue relates to existing trees impairing solar access to new solar panels, and what protection, if any, there is governing the existing trees.

The City of Sunnyvale has two different zoning requirements that affect solar access and tree preservation. In general they state that solar panels (new installation or existing) have solar access rights that must be weighed against the interests of tree preservation. The City's solar access ordinance provides maximum opportunity to install solar energy systems and generally protects access to existing and future systems. The code provides that if a proposed location for solar facilities conflicts with current vegetation (e.g. trees), the Director of Community Development may disapprove the proposed location. When there is no location outside of existing shading patterns, the Community Development Director must specify an alternate location that minimizes those conflicts. The solar access condition requires an adjacent owner to trim or remove trees (to the extent necessary) to provide solar access; however there is also a provision that if the City Council specifies vegetation to have "cultural, horticultural or historical significance," this provision does not apply.

At the time the solar access ordinance was written (1986) the tree preservation ordinance had not yet been written, so the term "significant sized" tree was not in the SMC. The term "horticultural significant" was used in-lieu of significant.

In past practice, staff and applicants have worked together to resolve these issues with neighbors. More recently it has become apparent that some clarification from a Municipal Code perspective is necessary to clarify property owners' rights.

### **Permit Fees**

TRP applications are currently no-fee applications with the Community Development Department, so this service is covered by other General Fund revenue. In 1991, the report estimated one hour per permit for processing by both Community Development staff and Public Works staff. It was also estimated that the City would receive a yearly average of 150 applications. In 1996, an estimate was completed showing an average of 2.5 hours being spent per permit. Based on data from 2004 and 2005, the average is now 2.73 hours per permit for Community Development staff and 1.1 hours for Public Works staff, for a total of 3.87 hours per permit. For 2005, this equates to 1,238 hours used by City staff for processing TRPs. In 1991, it was estimated that only 150 hours would be required per year for TRPs. The 2005 total hours is 8.25 times higher than the 1991 estimate.

There are several reasons for the increased number of hours required, including increased site visits, greater discussion with applicants or neighbors (customer service emphasis), greater administrative staff time in tracking/sending information to applicants, and an underestimation of actual time required when the ordinance was initially implemented.

The notion of TRP fees was presented to the public at the community meetings. Approximately one third of the participants voted to have a permit fee while two-thirds voted to keep TRPs free of charge.

### **Additional Ordinance Clarification Issues**

In the course of staff's review of the current tree ordinance, several items have been raised by City staff, the public, and the Planning Commission. These items are viewed as modifications to the ordinance and are intended to rectify minor problems. They are not intended to result in ordinance changes that would create or change City policy.

- **Define Tree Removal** - There is currently no definition of tree removal.
- **Tree Measurement** - A protected tree is classified as having greater than 38" in circumference and is currently measured at four feet high from the adjacent grade around the tree. In 1991, this height was chosen based on the International Society of Arborists (ISA) measurement of 4½ feet, but it was thought that four feet would be a simpler and more convenient measure. In subsequent years, Sunnyvale's different measurement has become a source of confusion, particularly for professional arborists who use the 4½ foot measurement in standard practice. Professional arborists must also measure trees at the four foot level when determining a trees value according to ISA, since their formulas require this measurement level. A modification to the tree ordinance to measure tree circumference at 4½ would bring Sunnyvale into conformance with ISA standards.

- **TRP Expiration** – SMC does not specify how long TRPs are valid. In the past staff has used a period of one year, the same as Miscellaneous Plan Permits.
- **Tree Surveys** – When development applications are submitted to the City, a tree survey is required that inventories all trees on the property. Tree surveys should state Latin name as well as common name but typically only state the common name, which has been a source of confusion and problems for staff in the past.
- **TRP Timeline** – In SMC §19.94.050(b) and §19.98.020(f) state that permits must be filed at least seven calendar days prior to the date of the tree removal. This seven-day period reflects the minor permit processing time policy in 1991. The current timeline for all minor permits (Design Review, Miscellaneous Plan Permits, Tree Removal Permits, etc.) is at least ten working days.

## **ENVIRONMENTAL REVIEW**

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This proposed ordinance revision is exempt from the California Environmental Quality Act (CEQA) review as provided by Section 15308 (Class 8) of CEQA.

## **FISCAL IMPACT**

The proposed ordinance revision will not have a direct fiscal impact to the City, unless staff is directed to increase or decrease the number of staff hours devoted to the Tree Removal Permit process. An increase would result from an expansion of the current notification system or appeal process where additional staff time and resources would be required to complete. A decrease would result if a certain species of trees are exempt or if certain properties (e.g. single-family) are exempted. Staff is not recommending any changes to the process or recommending any exempted properties at this time.

## **CONCLUSION**

It has been nearly 15 years since the City Council adopted the tree preservation ordinance. Since that time, many potential modifications have been brought to staff's attention from the public, developers, City staff, Planning Commission, and City Council. This report explores some of the more noteworthy ideas such as new findings to approve TRPs, establishing priority and undesirable tree lists, expediting the violation process for illegal tree removals, permit appeal rights, tree protection measures during and after construction, solar access, and other ordinance clarification issues. The study issue does not pertain to City owned street trees.

## **PUBLIC CONTACT**

**Public Outreach Meeting** – One of the main focuses of this study issue was involvement of the public in the process of reviewing the current ordinance. Staff conducted two public outreach meetings on January 18, 2005 (2:00pm and 6:00pm). Approximately 700 parties were noticed of the meeting, which included: 650 property owners from the list of TRP applicants from 2004 and 2005, a list of local developers, and all neighborhood association representatives. Ads for the meeting were also placed on the City's web site and in the Sunnyvale Sun. A total of 15 people attended both meetings.

At these meetings, the groups were presented with a series of boards which outlined the current ordinance and changes that were being explored. The groups were also given an opportunity to share their thoughts and ideas about the ordinance. At the conclusion of the meetings, the groups ranked the issues and ideas through a preference survey.

The general consensus of the groups is summarized in the following statements:

1. *Broaden the finding of a Hazardous Tree in tree removal findings to include problem or nuisance trees*
2. *City arborist services available to advise on neighbor's tree (hazard, etc.)*
3. *Make TRP approval findings easier for residential properties.*
4. *Make TRP findings more stringent of developers and commercial properties.*
5. *Reduce residential fines and adopt an administrative process.*

**Public Hearing Notifications** - Staff completed a display ad which was published in the *Sunnyvale Sun*. A notice of the two public hearings in March and April was sent to 60 parties including: all 2004 & 2005 TRP appellants, a list of local developers, the sign-up list from community meeting, and all neighborhood association representatives. The agenda and the staff report were posted on the City's web site and a notice was placed in the January 2006 Sunnyvale Quarterly Report. Finally, a slide stating the two public hearing times was also run on KSUN for approximately five weeks prior to the Planning Commission hearing.

**Planning Commission Study Session** – A Planning Commission study session was held for the item on January 23, 2006. At that meeting, the Planning Commission expressed the following comments: favored an undesirable tree and protected tree list, increased fines for illegal removals, greater findings for nuisance trees, easier for residential property owners to make findings to remove trees, streamline the penalty process. At the study session the issue of tree trimming and topping was discussed in detail. Subsequently, staff has concluded that the current code prohibiting damage to a protected tree sufficiently addresses this issue. The following is the definition of damage:



**§19.94.030. Definitions.** (1) "Damage" means any intentional action or gross negligence which causes injury, death or disfigurement of a tree. Actions include, but are not limited to, cutting, girdling, poisoning, over watering, unauthorized relocation or transportation of a tree or trenching, excavating, altering the grade or paving within the dripline of a tree.

## **ALTERNATIVES**

### **Alternative 1: Adopt the attached ordinance, which includes:**

- A. Required Findings:
  - 1. Adding a finding if a property has sufficient landscaping or is over landscaped;
  - 2. Adding a finding to allow removal of overgrown, but healthy, trees.
- B. Penalty Process for Illegal Tree Removals:
  - 1. Add administrative procedures that would require the aesthetic value of the tree to be replaced.
- C. TRP Appeals:
  - 1. Clarify that only applicants can appeal a TRP decision.
- D. Development of Property:
  - 1. Amend code to require a bond for protecting trees during construction;
  - 2. Amend code to require mitigation measures for new landscaping.
- E. Solar Access:
  - 1. Amend code to clarify solar access rights and protection of significant sized trees.
- F. Additional Ordinance Clarification Issues:
  - 1. Add the definition of "tree removal" to code;
  - 2. Increase tree measurement location to 4 ½ ' above ground;
  - 3. TRP permit valid for one year;
  - 4. Require Latin names to be used in tree surveys;
  - 5. Change TRP timeline to at least 10 days.

### **Alternative 2: Adopt the attached ordinance with changes, which may include any of the options listed under each category:**

- A. Required Findings:
  - 1. Define what a hazard is for a tree (location, siting, etc.);
  - 2. Add a finding to allow a tree to be removed if considered a nuisance.

B. Tree Species Priority:

1. Amend code to include a list of protected species of trees;
2. Amend code to include a list of undesirable trees.

C. Penalty Process for Illegal Tree Removals:

1. The civil penalty process outlined in SMC §19.94.160(b) and (c) would be **eliminated** for single-family property owners;
2. The civil penalty process outlines in SMC §19.94.160(b) and (c) would be **lowered** for single-family property owners;
3. The civil penalty process outlined in SMC §19.94.160(b) and (c) would be **eliminated entirely**.

D. TRP Appeals:

1. Allow a 15-day appeal period for any aggrieved person;
2. Allow a 15-day appeal period for any aggrieved person along with notification to adjacent property owners.

E. Permit Fees:

1. Introduce an application fee for TRPs.

**Alternative 3: Do not amend the ordinance.**

**RECOMMENDATION**

**Alternative #1.**

**Required Findings**

Staff believes that amending the ordinance to add new findings would allow for additional flexibility in reviewing tree removal permits. This flexibility is sometimes necessary to approve healthy trees that have grown in the incorrect context of the site.

**Tree Species Priority**

Staff believes that additional flexibility in the required findings makes tree species lists unnecessary at this time. The City arborist already reviews each tree using professional arborist's standards. A part of these standards recognizes that certain trees have more value to a community, while other trees have less value.

**Penalty Process for Illegal Tree Removals**

A new administrative remedy should be implemented to expedite the penalty process. The current mechanism for violations is arduous and inefficient, and as a result, has rarely been pursued by staff. A simpler process will benefit the City as well as the property owner in violations.

**TRP Appeals**

Staff recommends a clarification be made to the ordinance that would return appeal rights only to applicants. This was the intent of the original ordinance and staff does not believe there is compelling reason to allow any aggrieved party to appeal permits at this time. In addition, allowing parties other than the applicant to appeal permits could create a significant new workload for staff and the Planning Commission, considering the average number of applications reviewed yearly. Staff recommends that TRPs continue to be treated the same as Design Review applications.

**Development of Property**

Staff is recommending two additions to the tree ordinance which would provide two new tools when working with development applications. These tools will be instrumental in ensuring that protected trees survive construction impacts and that newly planted trees will grow to maturity. They will also compel developers to take all necessary precautions when working on a site with protected trees.

**Solar Access**

Staff recommends amending the SMC so that property owners with existing significant sized trees are not required to remove those trees if a neighboring property installs new solar panels, but reasonable trimming may be appropriate.

**Permit Fees**

Staff is not recommending charging a permit application fee at this time. The free application helps to reduce the financial burden on residential property owners that the tree ordinance sometimes imposes. Staff believes the free application also encourages property owners to apply for permits that otherwise may not. This recommendation is partially based on feedback received during the community outreach meetings.

**Additional Ordinance Clarification Issues**

Staff is recommending approval of the five ordinance clarification issues based on staff feedback concerning the use of the tree ordinance. The issues are not intended to create or change the City's policy. They are intended to rectify minor problems that staff has encountered in applying the ordinance and are viewed as omissions from the original 1991 ordinance.

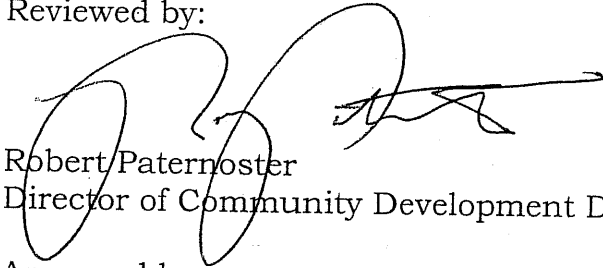
Reviewed by:



Trudi Ryan, Planning Officer

Prepared by: Steve Lynch, Project Planner

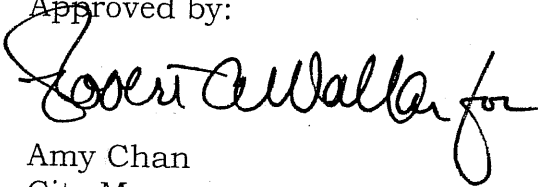
Reviewed by:



Robert Paternoster

Director of Community Development Department

Approved by:



Amy Chan

City Manager

**Attachments**

- A. Sunnyvale Municipal Code §19.49 (Tree Preservation - Revised)
- B. Sunnyvale Municipal Code §19.56 (Solar Access - Revised)
- C. Sunnyvale Municipal Code §19.98 (General Procedures - Revised)
- D. Council Study Issue Paper
- E. Draft Ordinance
- F. Letters from the public

TITLE 19. ZONING

ARTICLE 6. DISCRETIONARY PERMITS AND PROCEDURES

**Chapter 19.94. TREE PRESERVATION**

**19.94.010. Findings.**

The city council finds that:

- (a) The city of Sunnyvale has a great diversity of trees that are of economic value to the city and make it a desirable place for residents, business owners and visitors;
- (b) The appearance of Sunnyvale contributes to the economic prosperity of the city;
- (c) Trees contribute to the scenic beauty of Sunnyvale;
- (d) Trees help to naturally control flooding and erosion, moderate noise pollution, climate, dust and other airborne pollutants, remove carbon dioxide from the atmosphere and produce oxygen, and shelter and feed birds and other wildlife;
- (e) The development and redevelopment of the city often necessitates the removal of trees, thereby contributing to their depletion; and
- (f) It is necessary to protect and manage these valuable assets and their habitat to protect the health, safety and welfare of the citizens of Sunnyvale.

**19.94.020. Purpose.**

The purpose of this chapter is to regulate the protection, installation, removal and long term management of significantly sized trees on private property within the city and city owned golf courses and parks; encourage the proper protection and maintenance of significantly sized trees which are located on such property; establish a review and permit procedure to assure the correct planting, maintenance, protection and removal of significant trees on such property; and establish penalties for violation of its provisions. This chapter is not intended to regulate trees on public rights-of-way, which are regulated pursuant to Chapter 13.16. The provisions of this chapter identify and prescribe specific procedures and requirements for the filing, processing and consideration of the removal and preservation of trees. These provisions shall be used in conjunction with the general requirements and procedures identified in Chapter 19.98 including requirements and procedures for applications, fees, notification, appeals, conditions of approval, modifications, expiration, extensions, revocation and infractions, as applicable.

**19.94.030. Definitions.\***

For the purpose of this chapter the following definitions apply:

- (1) "Damage" means any intentional action or gross negligence which causes injury, death or disfigurement of a tree. Actions include, but are not limited to, cutting, girdling, poisoning, overwatering, unauthorized relocation or transportation of a tree or trenching, excavating, altering the grade or paving within the dripline of a tree.
- (2) "Dripline" means the outermost line of the tree's canopy projected straight down to the ground surface. As depicted in a plan view, the dripline appears as an irregularly shaped circle.
- (3) "Protected tree" means a tree of significant size.

(4) "Significant size" means a tree thirty-eight inches or greater in circumference measured four and one-half feet above ground for single-trunk trees. For multi-trunk trees "significant size" means a tree which has at least one trunk with a circumference thirty-eight inches or greater measured four and one-half feet above ground level, or in which the measurements of the circumferences of each of the multi-trunks, when measured four and one-half feet above the ground level, added together equal an overall circumference one hundred thirteen inches or greater.

(5) "Tree" means any woody plant which has a trunk thirteen inches or more in circumference at four and one-half feet above ground level.

(6) "Tree Removal" means the physical removal of a tree or causing the death of a tree through damaging, poisoning, or other direct or indirect action, including excessive trimming, pruning, or mutilation that sacrifices the health, destroys, or diminishes the aesthetic quality, or diminishes the life expectancy of the tree(s).

\* **Editor's Note:** The definitions in Section 19.94.030 also appear in Ch. 19.12.

#### **19.94.040. Actions prohibited.**

- (a) It is unlawful to damage or kill any protected tree.
- (b) It is unlawful to remove any protected tree from private property in any zoning district or from any city owned golf course or park, without a protected tree removal permit.

#### **19.94.050. Permits required.**

(a) In order to remove any protected tree from private property in any zoning district, or from any city owned golf course or park, it is necessary to obtain a protected tree removal permit from the department of community development. Any tree which has been designated as a heritage landmark, pursuant to the provisions of Chapter 19.96, shall not be removed without obtaining a tree removal permit in addition to a landmark alteration permit in accord with Chapter 19.96.

(b) Tree removal permits shall be filed at least seven ten working days prior to the proposed date of tree removal.

(c) Removal of orchard trees as part of farming operations or upon order of the county agricultural inspector are exempt from the provisions of this chapter.

#### **19.94.060. Standards and criteria.**

One or more of the following standards must be met before a protected tree removal permit may be approved:

- (a) The tree is diseased or damaged;
- (b) The tree represents a potential hazard to people, structures or other trees;
- (c) The tree is in basically sound condition, but restricts the owner's ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property owner's use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection:

(1) The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;

(2) The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;

(3) The approximate age of the tree relative to its average life span;

(4) The potential effect of removal on soil erosion and stability where the tree is located;

(5) Current and future visual screening potential;

(6) The property has become over landscaped with trees so that they are too numerous, crowded, and unreasonably restricts the property owner's ability to use their land. In this event, selective removal can be approved in conjunction with acceptable arborist's practices;

(7) The tree has outgrown its useful landscape value due to its inappropriate species, size, and location, relative to the existing structures on the property;

(8) Any other information the director of community development finds pertinent to the application.

#### 19.94.070. Display of permit.

All permits issued for tree removal shall be so displayed as to be clearly visible from a public right-of-way.

#### 19.94.080. Replacement trees.

(a) At the discretion of the director of community development, replacement trees may be required as a condition of issuance of a protected tree removal permit, or as a condition of any discretionary permit for development or redevelopment. The need for replacement trees shall be evaluated based on the following criteria:

(1) The number, species, size and location of existing trees on the site; and

(2) Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support.

(b) At the discretion of the director of community development, other mitigation measures may be required, where either it is not feasible to plant any replacement trees on the site, or where the replacement trees to be planted are deemed inadequate by the director to sufficiently mitigate the effects of the removal of the tree(s). Mitigation measures could include, but would not be limited to, paying for the planting of additional trees in parks or other public areas of the city.

#### 19.94.090. Requirements for replanting programs.

The following items shall be included in replanting programs when protected trees must be removed:

(a) Minimum distances between trees and between trees and buildings shall be provided such that the health of the replacement trees shall be ensured;

(b) Replanting shall occur within a specified time period;

(c) Mixed species shall be used in large replantings whenever possible to reduce the likelihood of disease and infestations;

(d) Tree care procedures shall be included in all replanting plans and shall include, but not be limited to, the following items: mulching; straightening; new staking or restaking; fertilizing; and any other procedures deemed necessary by the city;

(e) Minimum size for the replacement of a protected tree shall be a California Association of Nurserymen's standard twenty-four inch box size tree. The director of community development shall have the authority to require larger or smaller replacement trees upon review of specific cases. Smaller trees may be approved if the applicant can document the long term advantages of using the smaller tree size.

#### **19.94.100. Relocation of trees.**

At the discretion of the director of community development, the tree(s) to be removed may be required to be relocated on or off the subject site. The need for relocation shall be evaluated based on the criteria found in Section 19.94.080 plus the ease with which the removed tree can be replanted.

#### **19.94.110. Requirements concerning protected trees during site development or modification.**

When site development or modification is occurring and a discretionary permit and a public hearing are required, the developer or owner shall meet the following requirements:

(a) Tree Survey. A tree survey conducted by an arborist who has been certified by the International Society of Arboriculture shall be submitted as part of the required application materials for all use, design or special development permits on developing or redeveloping property. The survey shall show the location, size, and species (both common and Latin names required) of all trees (protected and unprotected) on the site, and shall include a calculation of the value of each tree. A written letter shall be included when a protected tree(s) is proposed to be removed explaining why the tree(s) cannot be relocated or the design of the structures altered to maintain the trees.

(b) Plan Modifications.

(1) The approving body shall have the ability to require the reasonable alteration of a proposed building in order to retain protected trees.

(2) The approving body shall have the ability to require relocation (on or off site) of protected trees which the applicant proposes to remove.

(c) Replanting Plans. When protected trees must be removed, replanting plans shall be submitted as part of the landscaping plan for the proposed project. The replanting plan shall be subject to the requirements of Section 19.94.090, but actual number and sizes of replacement trees shall be reviewed on a case by case basis.

(d) Tree Protection Plan. The developer shall submit a tree protection plan which shall demonstrate how tree protection shall be provided during and after construction and shall include, where appropriate, a description of any of the protective measures set forth in Section 19.94.120.



(e) Tree Bonds. The approving body shall have the authority to require a developer to post a bond with the City for the value of any tree required to remain as a condition of permit approval during development activities on a site.

(1) The bond may be for a maximum period of five years.

(2) The value of the tree shall be determined by the director of community development.

(3) The bond will be released back to the developer if the tree remains in good health through the end of the bond period.

(4) In the event the tree dies or begins to decline in poor health, the bond will be used by the City to replace the aesthetic value of the tree that was lost.

(f) Soil Mitigation. The approving body shall have the authority to require underground soil or planting measures, such as structural soils, in any locations deemed appropriate for future or existing tree growth.

#### **19.94.120. Tree protection during construction.**

Protected trees designated for preservation shall be protected during construction of a project by use of the following methods:

(a) Protective fencing shall be installed no closer to the trunk than the dripline, and far enough from the trunk to protect the integrity of the tree. The fence shall be a minimum of four feet in height and shall be set securely in place. The fence shall be of a sturdy but open material (i.e., chain link) to allow visibility to the trunk for inspections and safety.

(b) The existing grade level around a tree shall normally be maintained out to the dripline of the tree. Alternate grade levels, as described in the tree protection plan, may be approved by the director of community development.

(c) Drain wells shall be installed whenever impervious surfaces will be placed over the root system of a tree (the root system generally extends to the outermost edges of the branches).

(d) Pruning that is necessary to accommodate a project feature, such as a building, road or walkway shall be reviewed and approved by the department of community development and the department of public works.

(e) New landscaping installed within the dripline of an existing tree shall be designed to reproduce a similar environment to that which existed prior to construction.

#### **19.94.130. Project review committee.**

All tree surveys, replanting plans and tree protection plans submitted with discretionary permit applications made pursuant to Title 19, shall be reviewed at a project review committee meeting at which the applicant shall be present. Discretionary permits shall not be issued until such time as the tree survey, replanting plan and tree protection plans are deemed complete and have been approved by the director of community development.

#### **19.94.140. On-site inspections.**

Appropriate city staff shall be authorized to conduct on-site inspections during construction to ensure that tree preservation procedures are being followed and replanting plans

implemented. Failure to abide by an approved plan or permit may result in a stop work order to be issued by the director of community development.

**19.94.150. Emergency waivers and exemptions.**

The provisions of this chapter are waived if compliance would hamper the rescue of life or property from immediate danger or the repair of utilities in the event of emergencies such as wind storms, ice storms or other natural disasters.

**19.94.160. Penalties for violation.**

(a) Any person, property owner, firm or corporation who intentionally or negligently violates any of the provisions of this chapter or any permit issued pursuant to it, or who fails to comply with any condition of any discretionary permit which relates to protected tree preservation, shall be liable for a civil penalty assessed and recovered in a civil action brought by the city attorney.

(1b) In the event that the violation results in any substantial injury or damage to a protected tree, the civil penalty shall be not less than five thousand dollars nor more than twenty-five thousand dollars. In the event that the violation results in the destruction or improper removal of a protected tree, the civil penalty shall be not less than ten thousand dollars nor more than fifty thousand dollars. The appropriate penalty shall apply separately to each tree affected by the improper action.

(2e) In any civil action brought to seek such civil penalties, and/or to obtain injunctive relief for violation of any provision of this chapter, in which the city prevails, the court shall determine and impose reasonable expenses, including attorneys' fees incurred by the city in the investigation and prosecution of the action.

~~(d) The remedies provided for in this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.~~

(b) The director of community development or his designee shall have the authority to require an administrative hearing for any illegal tree removal.

(1) In the event of an administrative hearing, the hearing officer may impose such penalties, fines, reasonable expenses, landscaping, deemed necessary to replace the aesthetic value of the tree(s) that was removed based on generally accepted arborist's practices.

(2) The decision of the hearing officer may be appealed to the Planning Commission within 15-days of the date of service of notice of the hearing officer's decision. The decision of the Planning Commission shall be final.

(c) The remedies provided for in this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.

TITLE 19. ZONING  
ARTICLE 4. GENERAL DEVELOPMENT STANDARDS

**Chapter 19.56. SOLAR ACCESS**

**19.56.010. Permitted use.**

The use of solar energy systems and active and passive solar collectors for the purpose of providing energy to the structure upon which they are placed, whether as a part of such a structure or incidental thereto, is a use which may be established without the necessity for any discretionary land use approval, within all zoning districts, notwithstanding any provision of this title to the contrary.

**19.56.020. Solar envelope—Impairment of solar access by structures.**

(a) No building permit shall be issued for any construction, the effect of which when completed would be to interfere with solar access to the rooftop of any structure or to any preexisting active solar collector on nearby property. Solar access means the absence of shadows blocking or reducing exposure to the sun to an extent greater than ten percent daily during the hours between nine a.m. to three p.m., Pacific Standard Time, throughout any solar cycle. Nothing contained herein shall require modification to any structure, the shade pattern of which would impair solar access to rooftops or active solar collectors established later in time.

(b) The provisions of this chapter shall not apply to structures or uses within the DSP zoning district.

**19.56.030. Impairment of solar access by vegetation—Public nuisance.**

(a) No person or entity owning or in control of real property shall allow any tree or shrub thereon to interfere with solar access to any rooftop or to any active solar collector located on a nearby or adjacent property. Vegetation interfering with solar access to any rooftop or active solar collector, including vegetation shading the area of nearby properties where rooftops or active solar collectors subsequently are placed, shall be trimmed or removed to the extent necessary to provide solar access thereto.

(b) The provisions of this section shall not apply so as to require ~~trimming or the~~ removal of vegetation determined by such procedure as the city council may specify, to have cultural, horticultural or ~~historical~~ heritage significance. Additionally, the provisions of this section shall not require the removal of any significant sized tree or tree required to be preserved as a condition of approval of a land use permit. Reasonable trimming of any vegetation otherwise exempted by this section may be allowed if not harm occurs to the vegetation and the trimming does not endanger its cultural, horticultural or heritage significance.

(e) Violations of this section comprise a public nuisance, and whenever any enforcement officer of the city of Sunnyvale determines that any such condition exists upon any premises, he or she may require or provide for the abatement thereof pursuant to the procedures set forth in Chapter 9.26 of this code, and may make the costs of abatement of the nuisance a lien upon the property.

**19.56.040. Solar envelope—Conditions of tentative map.**

Each tentative subdivision map approved pursuant to the procedures set forth in Title 18 of this code shall be conditioned so as to prohibit new construction of structures that would

interfere with passive or active natural heating or cooling opportunities available to structures capable of being built on adjoining parcels, in accordance with all site development and zoning regulations in effect at the time of such approval. No such conditions shall be imposed, however, which would result in reducing allowable residential unit densities or the percentage of lot area which may be occupied by a building or structure under those applicable land use regulations in effect at the time such a tentative subdivision map is filed. Positive conditions, covenants and restrictions shall be provided as a part of each tentative map. Adverse conditions, covenants and restrictions shall not be included therein, and, to the extent that they may be contained in subdivision documents approved prior to the effective date of this chapter, they are hereby declared to be contrary to the public welfare and to the public policies set forth herein.

**19.56.050. Placement of active solar collectors.**

Prior to issuance of any building permit for construction or placement of an active solar collector, the director of community development shall require the applicant to provide a written analysis or graphic survey of shading patterns on the subject parcel. The director is authorized to disapprove any proposed location for such a collector which would be within the existing shade pattern of vegetation growing on adjoining properties. If there is no feasible location for the collector outside of existing shade patterns, the director shall specify a location which minimizes the adverse effects upon such adjoining vegetation.

**19.56.060. Variances.**

(a) Variances may be granted from restrictions imposed by this title on the height, setback and location of structures, in the public interest, upon a showing by the applicant, made pursuant to the procedures set forth in Chapter 19.84:

- (1) That the proposed construction or alteration is necessary for the purpose of placing or constructing an active or passive solar collector as defined herein;
- (2) That the proposed design complies in all material respects with the provisions of Title 16 of this Code;
- (3) That the proposed construction or alteration has been designed, located, and screened in a manner calculated to minimize adverse visual, audible, and other effects on surrounding properties; and
- (4) That the granting of such a variance will not be materially detrimental to the public welfare.

(b) Applications for variances from the regulations imposed by this chapter shall be considered in accordance with the standards and procedures set forth in Chapter 19.84.